IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4778 of 2007

MADAN LAL
V/S
MAGHRAJ & ANR

Mr. MISRILAL CHHANGANI for Mr. ASHOK CHHANGANI, for the appellant / petitioner

Mr. M.PRAJAPAT, for the respondent

Date of Order : 19.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

Perused the impugned order.

By the impugned order, the learned trial court has dismissed the petitioner's application for amendment. The suit is a suit for eviction interalia on the grounds of reasonable and bonafide necessity, and pleading the petitioner to be the tenant wherein plaintiff's evidence is already over.

By amendment the petitioner seeks to add the plea that in absence of the other cotenant Anil Kumar s/o Shri Parmanand Daiya, the suit is not maintainable. The other plea sought to be added is that the notice terminating tenancy is invalid.

A reply to this application was filed, contending interalia that the plaintiff's evidence is already over, and when the case came up for defendant's evidence this baseless application has been filed, and that since the suit is filed for eviction in view of the provisions of Rent Control Act, notice for termining tenancy is not required to be given.

The learned trial court has decided two applications; one under O. 13 Rule 2, and the other for amendment. Deciding the application under O. 13 Rule 2, the learned trial court found, that the suit has been filed by Magraj against Madanlal, pleading the defendant to be tenant, and there is no stand taken in the written statement about any Anil Kumar being the co-tenant, or being in possession along with the petitioner. Likewise, it has also been considered that the petitioner himself had filed suit no. 1138/93 against the plaintiff. Even therein it has not been pleaded that Anil Kumar is any other cotenant, or is in possession of the shop, therefore, there is no justification for taking the document on record as it is not relevant for deciding real controversy, and at the same time the application for amendment has also been dismissed.

Assailing the impugned order, learned counsel relied upon judgment of Hon'ble the Supreme Court in Andhra

Bank Vs. ABN Amro Bank reported in 2007 AIR SCW-4466 to contend that merits of the amendment cannot be gone into, delay is no ground for refusing the amendment, and additional ground of defence can be taken.

I have gone through the judgment, and find, that therein pre-dominant considertation taken into account by the Hon'ble the Supreme Court is, that the amendment would be necessary for decision of the real controversy between the parties in suit, and Hon'ble the Supreme Court was of the view, that amendment sought to be introduced must be allowed, and then the aforesaid observations had been made, but then, in my view the said judgment does not lay it down as a blanket law, that in every case whether the amendment application is filed with delay, or plea sought to be raised is absolutely frivolous, and not relevant for decision of the real controversy between the parties, still it should always be allowed.

In the present case the glaring circumstances are, that much before filing of the present suit, which was filed on 22.7.1997, the petitioner himself had filed a suit no. 1138/93 for injunction against the plaintiff, and a plea in this regard is already there in the written statement in para-5, alleging that plaintiff wanted to increase the rent but as the defendant did not incease the rent, the plaintiff stopped taking rent from him, and with

a view to raise obstruction in the business of defendant the plaintiff attempted to demolish western wall of the shop, and attempted to construct staircase. Thereupon the defendant had to file a suit for injunction against the plaintiff, wherein temporary injunction has been granted. Though suit number has not been given in the written statement, but the fact remains that it is pleaded that the above suit is filed.

In such circumstances, when the entire litigation was conducted, and the previous litigation is being conducted, treating the petitioner alone to be the tenant, the plea sought to be raised now, by way of amendment, is exfacie frivolous, and cannot be said to be necessary for determination of real question in controversy between the parties, more particularly when even in the application it is not alleged that said Anil Kumar is also in actual possession of the shop.

In that view of the matter, I do not find any error in the impugned order requiring interference in my writ jurisdiction.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/sushil/